

BEFORE THE STATE ELECTRICAL BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 24.141.403, licensee)
responsibilities)

TO: All Concerned Persons

1. On February 24, 2005, the State Electrical Board published MAR Notice No. 24-141-29 regarding the public hearing on the proposed amendment of the above-stated rule relating to licensee responsibilities, at page 317 of the 2005 Montana Administrative Register, issue no. 4.

2. On March 18, 2005, at 9:00 a.m., a public hearing was conducted in Helena, Montana. No members of the public were present at the public hearing. In addition, three written comments were received prior to the closing of the comment period.

3. The Board received three comments regarding the proposed amendment of ARM 24.141.403. The Board has thoroughly considered all of the comments. A summary of the comments received and the Board's responses are as follows:

Comment 1: Duane Mellinger, Business Manager for IBEW Local 233 stated that "language should be submitted that would require a contractor to have the permit in hand before (he) commences work on the project and a large fine or even removal from the job if they are caught".

Response 1: The Board does not believe that the rule should require that an electrical permit always be obtained before the electrical contractor begins work. The Board believes that an inflexible requirement for obtaining a permit prior to starting any work is neither necessary nor appropriate to protect the public health, safety and welfare. As mentioned in Comment 3, there may be emergency situations where an electrician needs to start work immediately in order to protect the public health, safety or welfare. The Board notes that it has jurisdiction and authority over licensed electricians, but does not have any authority over the permits that are issued by building code authorities. The Board's rule only addresses the obligations of the licensee with respect to that individual's conduct as a licensed electrician or as a licensed electrical contractor.

The Board believes that it is enough that the electrical contractor makes a sincere, good faith effort to obtain the required permit early enough in the construction process to allow for the appropriate inspection of the electrician's work by a building inspector. The Board is in the process of

drafting a definition or explanation of when a permit application is "timely", such that it takes into account the differing needs and circumstances of licensees, permit issuers, and the public across the state. The definition or explanation of what is "timely" will be proposed as part of formal rulemaking in the future, and thus concerned persons will be able to comment upon that concept at a later date.

The Board believes that disciplinary action against licensees is not appropriate when there has been a timely, good faith effort to obtain the appropriate permits. However, the Board is prepared to discipline licensees (by imposing fines, placing a license on probation or suspension, or a combination of sanctions) for licensees who do not timely and in good faith apply for electrical permits. The Board concludes that it is not necessary for the protection of the public health, safety or welfare to impose disciplinary action in the event the proper permit has not been issued prior to the electrical contractor performing any work on a project. Accordingly, the Board declines the commenter's invitation to create an absolute requirement for having a permit before beginning any work.

Comment 2: Diane Murdoch, a licensed electrician, submitted a comment that stated "the proposed change seems to shift the responsibility for securing proper permits and inspections to the electrician doing the work. It would seem the prime responsibility would be with the trade contractor for the job. The electrician on the job should be sure the proper permits are at the site, the inspection would of necessity be the call of the electrician doing the work."

Response 2: There is only one individual who is designated as the "responsible electrician" for a contractor's license. That individual is responsible for obtaining the proper electrical permits. Licensees who are not designated as the "responsible electrician" for the electrical contractor are not authorized to obtain permits on behalf of the contractor. The proposed amendments to the rule do not change that responsibility.

The Board concludes that if the appropriate permits are obtained in a timely fashion, there will not be a problem with timely obtaining the needed inspection of work. While the commenter is correct that the on-site electrician is the person who is in the best position to know when a phase of a project is ready for inspection, the rule provides that the legal responsibility for obtaining timely inspection rests upon the person who is the contractor's "responsible electrician".

Comment 3: Will R. Hendrick of Boundary Electric Company submitted a comment wherein he stated that "The State of Montana needs to go further and provide an actual booklet of

pre-numbered permits to the electrical contractors. If emergency work needs to be accomplished that could prevent serious injury or death, a contractor has the fiduciary and ethical responsibility to provide for those repairs immediately, and do so without the benefit of the required permit. If the State of Montana issued pre-numbered permits to electrical contractors, the contractor could call for an inspection the day of, or within 48 hours of the accomplished work. This method could minimize potential problems with the delay of issuance of permits. The checks and balances in this system include the possibility of a random audit by the state inspector of the pre-issued permits, and of submission of the fees for same."

Response 3: As noted in Response 1, the Board's rule does not impose a requirement that the proper permits be obtained prior to the commencement of any work by a licensed electrician.

The Board again notes that it has jurisdiction and authority over licensed electricians, but does not have any authority over the permits that are issued by building code authorities. The Board lacks the power to change the permitting process with respect to electrical or building permits. However, the Board has been advised that the state Building Codes Bureau is intending to provide an "on-line" permitting process in the near future that should alleviate some of the commenter's concerns about the availability of electrical permits outside of normal business hours.

4. The Board has amended ARM 24.141.403 exactly as proposed.

MONTANA STATE ELECTRICAL BOARD
TONY MARTEL, PRESIDENT

/s/ KEITH KELLY
Keith Kelly Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Rule Reviewer

Certified to the Secretary of State July 18, 2005